

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

MARIA PENA

Complainant

VS.

HOME DEPOT U.S.A., Inc.

Defendant

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CIVIL ACTION NO. 2:21-cv-55

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT

COMES NOW, Complainant, Maria Pena, and files this action against Defendant, Home Depot U.S.A., Inc. (“Home Depot”) and alleges as follows:

1.0 INTRODUCTION

1.1 This is a premises liability cause of action causing serious personal injuries to Complainant, Maria Pena, which occurred on or about March 29, 2019, at Home Depot Store Number 6584, located in Nueces County, Texas.

2.0 PARTIES

2.1 Complainant, Maria Pena, is a resident of Corpus Christi, Nueces County, Texas.

2.2 Defendant, Home Depot U.S.A., Inc., is a Delaware Corporation with its principle place of business in Atlanta, Georgia, and may be served with citation through its Registered Agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, TX 78701.

3.0 JURISDICTION

3.1 This Court has original jurisdiction of this action under 28 U.S.C., § 1332.

3.2 Defendant, Home Depot U.S.A., Inc. (“Home Depot”), is a Delaware corporation with its principal place of business in some state other than Texas, thereby creating a diversity of citizenship between Complainant and Defendant.

3.3 The amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.00.

4.0 VENUE

4.1 The United States District Court, Southern District of Texas, Corpus Christi Division, maintains jurisdiction over the following Texas counties: Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live Oak, Nueces and San Patricio.

4.2 Venue is proper in the United States District Court, Southern District of Texas, Corpus Christi Division because a substantial part of the events giving rise to the claim made the basis of this cause of action occurred in Nueces, County, Texas which lies in the Southern District of Texas pursuant to 28 U.S.C. § 1391(b)(2).

5.0 FACTS

5.1 On March 29, 2019, at approximately 2:17 p.m., Ms. Pena and her relative were shopping for goods in the outdoor garden section of Home Depot Store No. 6584, located in Corpus Christi, Nueces County, Texas. Ms. Pena was shopping in aisle 50 which was exposed to the outdoors and faced the outdoor parking area in front of the Home Depot store.

5.2 While Ms. Pena was shopping in the outdoor aisle, suddenly and without warning, an approximately 2.5-pound aqua colored flower planter fell from the uppermost shelf (approximately 7ft. above the floor) and struck the top of Ms. Pena’s head. Almost immediately thereafter, another stack of three larger blue planters (each weighing approximately 3 lbs.) fell from the same shelf, striking Ms. Pena again on the top of her head. Mrs. Pena experienced pain in her head and neck and sat down on the floor. A Home Depot garden department cashier heard

the pots crash to the ground and came over to investigate. A Home Depot manager on duty then came and escorted Ms. Pena to a waiting area, sat her down and provided an ice pack for her head. Ms. Pena provided information so the manager could complete a Home Depot Incident Report.

5.3 Ms. Pena's head pain continued to intensify and she began experiencing dizziness and nausea. Ms. Pena's husband arrived and immediately transported Ms. Pena to Christus Spohn – South Hospital for treatment of her head and neck injuries. Mrs. Pena was diagnosed with an unspecified head injury, contusion of her scalp and cervical radiculopathy at the hospital. Mrs. Pena sought follow-up care with Robert Vela, M.D., Humpal Physical Therapy, Andrew Indresano, M.D. – Orthopedic Specialist, True Medical Imaging (MRI) and Wilson Velasquez, M.D. – Pain Management Specialist. Mrs. Pena injuries included a traumatic brain injury and four (4) cervical disc herniations.

5.4 The serious injuries and damages suffered by Mrs. Pena as a result of this incident were proximately caused by the negligence of Home Depot and its employee(s) as set forth herein.

6.0 CAUSE OF ACTION – PREMISES LIABILITY

6.1 Home Depot is the owner of the premises, or alternatively, in possession of the premises at 4038 South Port Avenue, Corpus Christi, Nueces County, Texas where the incident made the basis of this cause of action occurred.

6.2 Ms. Pena was an invitee on March 29, 2019, when she entered Home Depot.

6.3 Ms. Pena entered Home Depot's premises at Home Depot's invitation for their mutual economic benefit.

6.4 The highly stacked planters in the Home Depot outdoor garden section created an unreasonable risk of harm to Ms. Pena and customers like Ms. Pena because the planters were not secured to prevent them from falling off the shelves and hitting customers in windy conditions.

6.5 Home Depot and its employees, servants and/or agents, created, knew or reasonably should have known the highly stacked unsecured planters in the Home Depot garden section posed an unreasonable risk of harm to Ms. Pena and other customers, like Ms. Pena.

6.6 Home Depot had a duty of care to adequately warn Ms. Pena of the highly stacked unsecured planters or to make the highly stacked unsecured planters reasonably safe.

6.7 Home Depot's breach of these duties was the proximate cause of the planters falling and striking Ms. Pena on the head, and the injuries and damages suffered by Ms. Pena.

6.8 Home Depot's wrongful acts, errors, omissions, neglect and carelessness, as set forth in the preceding paragraphs were the proximate cause of Ms. Pena's injuries and damages.

7.0 DAMAGES

7.1 As a result of Defendant, Home Depot's negligence, Complainant, Maria Pena, suffered the following damages:

- a. Medical expenses in the past;
- b. Medical expenses that, in reasonable probability, she will suffer in the future;
- c. Loss of earning capacity in the past;
- d. Loss of earning capacity that, in reasonable probability, she will suffer in the future;
- e. Physical impairment in the past;
- f. Physical impairment that, in reasonable probability, she will suffer in the future;
- g. Mental impairment in the past;
- h. Mental impairment that, in reasonable probability, she will suffer in the future;
- i. Pain and suffering in the past;

- j. Pain and suffering that, in reasonable probability, she will suffer in the future;
- k. Mental anguish in the past; and
- l. Mental anguish, that in reasonable probability, she will suffer in the future.

8.0 JURY TRIAL

8.1 Complainant hereby requests a trial by jury, pursuant to the United States Constitution 7th Amendment.

9.0 PRAYER

9.1 WHEREFORE, PREMISES CONSIDERED, Complainant respectfully requests that Defendant be served with citation and after a jury trial herein, Complainant has and recovers against Defendant the following relief:

- a. Judgment against Defendant for all of Complainant's actual damages as determined by the evidence;
- b. Pre-judgment and post-judgment interest as provided by law;
- c. Costs of court as provided by law; and
- d. Such other relief to which Complainant may be entitled.

Respectfully submitted,

ERSKINE & BLACKBURN, P.L.L.C.

By: /s/ Blake C. Erskine, Jr.

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